Declassified in Part - Sanitized Copy Approved for Release 2012/03/20 : CIA-RDP90-00965R000706580020-7

NEW YORK TIMES MAY 20 1987 A 31

Reagan Ignites a Constitutional Crisis

By Laurence H. Tribe

After President's Reagan's former national security adviser, Robert C. McFarlane, testified that he had briefed the President "dozens" of times about the steps that he and various aides were taking to raise funds for the contras' military operations, the White House defense began edging away from the increasingly implausible "factual" claim of no Presidential involvement and toward an even more troubling legal claim of Presidential immunity.

This latest position continues to hold that the President played no role in diverting profits from the Iran arms sale to the contras — a claim that remains to be explored in further hearings.

But the White House also insists that however active a role the President played in efforts to encourage private and foreign assistance to the contras from sources outside the Iranian arms deal, no law passed by Congress either attempted to, or could, restrict his freedom to deploy his own office, or the offices of his National Security Council, to obtain third-party support for the contras.

This was not the Administration's expressed understanding of the Boland Amendment of October 1984 when the Assistant Secretary of State for Inter-American Affairs, Langhorne A. Motley, testified before the Senate Foreign Relations Committee shortly after Saudi Arabia's King Fahd had met with President Reagan and doubled the Saudis' clandestine aid to the contras, to $2 million a month.

At that time, Mr. Motley testified that soliciting aid from third countries would violate the amendment's prohibition against "direct or indirect" support for the contras. The Administration was right then; it is wrong now.

First, the Boland Admendment bars support for the contras drawn from any "funds available to . . . any . . . agency or entity of the United States involved in intelligence activities."

The amendment's legislative history makes clear that this includes Government revenues devoted to paying the salaries and expenses of intelligence operatives whenever their actions — such as the solicitation of contributions — "would have the effect of supporting" the contras "directly or indirectly," in the amendment's words.

Second, even if the costs of paying agents were not covered, the funds that such agents raised were indirectly made "available to" agencies that became "involved in intelligence activities," as the National Security Council had certainly become by 1985.

> 'If the puppets are subject to the law . . .'

Having covertly turned the National Security Council into an operational intelligence unit in order to sidestep Congressional restrictions on, and oversight of, the Central Intelligence Agency, the White House cannot now invoke the view held by Congress, the Tower Commission and many others that the N.S.C. was not intended to serve as an intelligence agency.

That the funds obtained from domestic and foreign sources circumvented agency coffers and may have gone straight into the contras' hands cannot obscure their availability for intelligence agency purposes and projects.

Third, it is irrelevant whether the Presidential office is deemed an "entity of the United States involved in intelligence activities," because the President — if his latest "recollections" are accepted — either encouraged entities involved in intelligence to circumvent the amendment or, at the very least, did not "take Care that the Laws be faithfully executed" by such entities, as Article II, Section 3 of the Constitution requires.

In other words, if the puppets are subject to the law and violate it, the puppet master cannot escape accountability.

Therein lies what appears to be the most serious breach of duty by the President — a breach that may well entail an impeachable abuse of power, however politically unlikely impeachment of this affable officeholder may be.

The Constitution is, after all, indifferent to popularity and blind to personality. Yet, stripped of its technical camouflage the latest White House position ultimately reduces to the claim that this President, being

Continued

Laurence H. Tribe is professor of constitutional Law at Harvard University.

Declassified in Part - Sanitized Copy Approved for Release 2012/03/20 : CIA-RDP90-00965R000706580020-7

Declassified in Part - Sanitized Copy Approved for Release 2012/03/20 : CIA-RDP90-00965R000706580020-7

05-20-87 WED 08:07 BURRELLES P.22

somehow outside the Government, is above the law.

Our entire constitutional system — not to mention common sense — rebels at any such notion.

The carefully crafted requirement of Article I, Section 9, that all funds raised by the Government or its agents must enter and leave the Federal Treasury, and must do so only pursuant to laws passed by Congress, would be rendered utterly meaningless if the President, seeing himself not as an agent of the Government but as an outsider, could preside freely over the creation of a shadow treasury designed to aid his shadow intelligence network in pursuit of his private schemes.

Congress's control over the purse would be rendered a nullity if the President's pocket could conceal a slush fund dedicated to purposes and projects prohibited by the laws of the United States.

When Ronald Reagan was elected on an antigovernment platform, pundits smiled. When incumbent President Reagan was re-elected on such a platform, political scientists were puzzled. But when the President's status as a perpetually bemused and patriotic outsider is transformed from a political stance into a shield against the rule of law, a constitutional crisis is at hand. □

2/2

22/30

Declassified in Part - Sanitized Copy Approved for Release 2012/03/20 : CIA-RDP90-00965R000706580020-7